

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 445 19 95Bill H _____ S 201 Original bill & history CH. Committee on Business + LaborHearing Date(s) Mar 02 ☒ CMar 03 ☒ C_____ ☐ C_____ ☐ CDate Out Mar 06 ☒ CS. Committee on Labor + Employment RelationsHearing Date(s) Feb 02 ☒ CFeb 05 ☒ C_____ ☐ C_____ ☐ CFeb 05 ☒ CDid this bill originate in an interim committee? Yes No

Committee _____

Report _____

Conference Committee

Apr 04

	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/05	3RD READING AMENDMENTS CONCURRED	50	0
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 490		
	EFFECTIVE DATE: 04/14/95		

SB 201 INTRODUCED BY BURNETT, ET AL.

AUTHORIZE DRUG OR ALCOHOL TESTING AS A CONDITION OF CONTINUED EMPLOYMENT WHEN EMPLOYER HAS REASON TO BELIEVE THAT AN EMPLOYEE MAY HAVE CONTRIBUTED TO A WORK-RELATED ACCIDENT THAT CAUSES DEATH OR PERSONAL INJURY OR PROPERTY DAMAGE IN EXCESS OF \$1,500

1/19	INTRODUCED		
1/19	FIRST READING		
1/19	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/02	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/10	2ND READING PASSED AS AMENDED	46	3
2/11	3RD READING PASSED	41	8
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/15	REFERRED TO BUSINESS & LABOR		
3/02	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED AS AMENDED	90	7
3/14	3RD READING CONCURRED	86	13
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS NOT CONCURRED	26	20
3/21	CONFERENCE COMMITTEE APPOINTED		
4/04	HEARING		
4/04	CONFERENCE COMMITTEE REPORT NO. 1		
4/05	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	1
4/06	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	2
	HOUSE		
3/28	CONFERENCE COMMITTEE APPOINTED		
4/05	CONFERENCE COMMITTEE REPORT NO. 1		
4/06	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	83	16
4/07	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75	21
4/11	SIGNED BY PRESIDENT		
4/11	SIGNED BY SPEAKER		
4/11	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 445		
	EFFECTIVE DATE: 04/14/95		

SB 202 INTRODUCED BY JERGESON, ET AL.

REMOVE TERMINATION OF THE FRAUD, WASTE, AND ABUSE HOTLINE BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

1/19	INTRODUCED
1/19	FIRST READING

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on February 2, 1995, at

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB	201
	HB	114
	SB	180

Executive Action: None.

HEARING ON SB 201

Opening Statement by Sponsor:

SENATOR JIM BURNETT, SD 12, Luther, stated Stillwater Mining Company, Nye, MT, is the largest platinum-palladium mine in the Western Hemisphere. The company is concerned about improved working conditions. Senate Bill 201 allows the company to test employees following an accident, which has caused a death, personal injury, or company damages in excess of \$500. Senate Bill 201 provides an important tool for employers to reduce the cause of industrial accidents. SENATOR BURNETT urged the committee to DO PASS SB 201 (EXHIBIT A).

Proponents' Testimony:

Ward Shanahan, Stillwater Mining Company Attorney, Helena, MT, stated he has represented Stillwater Mining for over thirteen years. Mr. Shanahan stated the mine officials requested SENATOR BURNETT to sponsor the bill. Stillwater Mining is the successor to two partnerships owned by Chevron USA Inc. and Manville Mining Company. The 1981 partnership began the interest in Montana following exploration activities by Manville Mining Company, which is now the Stillwater Complex. The principle office is located at Nye, MT, in the Beartooth Mountains. The Stillwater Complex is the only significant source of platinum/palladium and associated metals of the platinum group, called BGMS. Stillwater Mining is publicly traded and is engaged in exploration, development, and mining. The mining operation is located at Nye, MT, South of Columbus. The company plans to open a second mine in the area South of Big Timber, and the site will be known as the East Bolder Project. Stillwater also operates a small, fresh metals smelter at Columbus, MT. The smelter recovers metals from Nye concentrates.

Senate Bill 201 deals with accident drug testing, as a condition for continued employment. Drug testing, according to Mr. Shanahan, is a complicated problem because it involves the company's concern for safety in the work place, a decent, social work environment for employees, loss time accidents, work construction, and loss of efficiency in earnings. Personal privacy rights and civil rights of the employees must be personally and legally respected. Safety methods are customized, according to the individual mines. Montana law drug testing information is contained in Title 39, Labor, Chapter 2, of the Employment Relationship, part 3, General Prohibitions on Employers. Senate Bill 201 is an additional exception to the prohibitions of employers against lie detector tests and regulations of blood and urine testing. (EXHIBIT 1) Senate Bill 201 would amend and clarify the exceptions to the prohibition of blood and urine testing by adding a new exception. The exception is the employee who has been involved in a work related accident which causes death, personal injury or property damage in excess of \$500. Federal Law preempts Montana Law in respects to regulated industries. Transportation industry personnel, such as rail, bus, and airplane employees, are tested differently than other people. This legislature has adopted the Department of Transportation regulations for drug testing. Montana law does not authorize annual or random physical examinations or random drug testing. Only pre-employment physical drug testing is allowed, unless the employee acts "strangely." Mr. Shanahan distributed the methodology distributed by the Department of Transportation. (EXHIBIT 2). Supervisors and other people are trained to determine whether someone takes drugs. The methodology is not satisfactory and often creates problems between employees and employer.

The existing law does not allow the employer to take adverse action against an employee if the person presents a reasonable explanation or medical opinion, indicating test results were not caused by either alcohol or legal drug use. The law contains many safeguards for the employee's rights, In 1991, a full

fledged campaign was tried and met with considerable opposition by labor organizations and civil rights groups. The concern was the invasion of employee's privacy. The statutes, Department of Transportation, regulations and applicable case law demands good reason for drug testing. The employee's privacy rights cannot be violated. **Mr. Shanahan** stated the present law is inadequate. Stillwater Mining is regulated by the Federal Mines Safety and Health Act. Montana law specifically specifies the company provides a safe place to work. Yet, it is difficult to provide that "safe" place. The new exception provides a sufficient cause to make drug testing a condition for continued employment. If there is an accident or death, or personnel injury where property damage is in excess of \$500, the testing must take place. Senate Bill 201 provides an exception to the reason or the suspicion for drug testing.

Christopher Allen, Corporate Manager of Safety, Stillwater Mining Company, Nye, MT, stated he has been in the mining industry for twenty-five years before getting a degree in health. For the past ten years, **Mr. Allen** stated he has managed safety and environmental programs in Wyoming, Nevada, and Indonesia, as well as Montana. **Mr. Allen** stated in every location, the company has been able to employ drug testing for cause, affecting a reduction of work related accidents. People are aware that if they have an accident, they will be tested, a no-fault guarantee. It does not require a supervisor, lay person to make an intoxication judgment. The company proposed SB 201 as a way to reduce accident rates and reduce Workers' Compensation costs. **Mr. Allen** provided The Industrial Company Wyoming Inc. (TIC) statistics to committee members (**EXHIBIT 3**). TIC is a nation wide, major industrial company and is also the company's current contractor. The loss time accident rates, since 1991, dramatically increased

Mr. Allen stated safety drug elements, other than testing have worked as well. The time accident and severity rate is a measure of how long a person was off work and how much is indirectly related to the accident cost. **Mr. Allen** provided national statistical backup (**Exhibit 4**). TIC does random testing on occasion in states that permit random testing. The number of post accident tests indicate how many people are doing drugs in the work place. Senate Bill 201 is a straight safety bill, not a bill to invade personal privacy. The company believes the legislation provides additional tools to reduce the number of severity of accidents. The industry has high numbers of serious accidents and fatalities. Senate Bill 201 will reduce Montana's statistics.

Russell J. Ritter, Washington Corporations, Missoula, MT, stated there are five operating companies in Montana that would come under the SB 201 jurisdiction. The corporation urged the committing to give a DO PASS recommendation for the same reasons **Mr. Shanahan** stated.

David Owen, Montana Chamber of Commerce, stated support for HB 201. Mr. Owen changed the question around and asked. If death, injury, or severe damage to property are not good reasons to test for drugs, what reasons are good enough. Mr. Owen urged the committee to accept SB 201.

Don Allen, Montana Wood Products Association, Helena, MT, stated support of SB 201. Mr. Allen stated the facilities that process various kinds of lumber materials present more opportunities for accidents and for serious accidents, as well. Mr. Allen said safety programs and training methods vary, but accidents still happen. Death, personal injury, property damage are important issues. Senate Bill 201 works for the safety of workers. Mr. Allen urged the committee to pass SB 201.

Mr. Steve Turkiewicz, Montana Auto Dealers Association, Helena, Montana, representing Montana's new truck and car dealers, stated the respective vehicle industry does a great deal of repair and maintenance business. Safety is paramount. SB 201 represents an important tool to protect businesses and consumers.

Opponents' Testimony:

Darrell Holzer, Montana AFL-CIO, Helena, MT, stated Organized Labor rises as reluctant opponents. Montana has some of the absolute, best worker's protection laws in the nation, as related to random drug testing. It is important to protect the interest of the employer, as well as the employee. Organized Labor always is an advocate of safe work places. Property damage in excess of \$500 is too low. The investigation start and stop activity concerning a trip-on-small-equipment accidents should remain with the safety committee. The urine tests should not apply, although a work related or fatality related accident should necessitate drug tests and all investigatory avenues for informational gathering purposes.

Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, Helena, MT stated opposition. The language is puzzling. The section of law is a hybrid, a product of bipartisan cooperation over the last decade. The law is carefully crafted, but the compromise strikes a delicate balance between the rights of privacy and the human dignity of the worker, with the public safety considerations of the work place. The Montana State Constitution, sections 4 and 10, states "the dignity of the human being is viable. The right to privacy is essential to the well being of a free society and shall not be infringed without showing its validity and interest." Montana is not like Utah and Nevada. Montana is like very few other places in the Free World. There is an explicit right to privacy, guaranteed to all its citizens. Mr. Crichton asked the committee to consider the fact that multi-national companies are operating in Montana. Until a citizen demonstrates otherwise, a citizen is innocent until he/she is proven guilty. The concept should be true in the work place, as well. The existing law provides the

employer a right to test for drugs is there is a reason to believe the employee is working in an impaired way. Senate Bill 201, as it exists, is narrowly tailored. The proposed language is broad. Mr. Crichton asked how is a "worker involved in an accident" defined. Does this mean the person has to cause the accident or is the person along side the person who is in an accident. Does the witness at the scene of the accident need to be tested. Does the person who happens to be in the same room at the time of the accident need to be tested. Does the employer have to believe that the worker's faculties are impaired. Mr. Crichton asked if the testing occurs immediately after the accident, within a 12 hour window of the following week, or anytime the employer wants to test. The definitions are vague. Mr. Crichton hoped the test would be "one time" testing and not an open ended invitation for continued testing. The description of the person who has been involved in an accident should be clearly defined to prevent "bad blood" between workers and management. Absent of compelling flaws in the existing law, the bill addresses a fictional problem. The message of the electorate is to get government out of the private lives. Mr. Crichton urged the committee not to be tempted to spend more time and more energy on the contents of SB 201 (EXHIBIT 5).

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SUE BARTLETT asked how far or how narrow is the interpretation of the phrase "has been involved in". Mr. Chris Allen replied how far the interpretation goes depends on the circumstances. For instance, all locomotive operators in an underground mine situation who drive a train over a pickup truck because the operator fails to have the person in the front of the train watching where the train was going, would be liable. The pickup truck driver would not be liable. The person driving the train would be liable. In the case where one employee tells another employee to close a valve, but fails to do so, that person would be tested. If the person who closed the valve was told not to close the valve, but does so, that person who precipitated the incident would be tested.

SENATOR BARTLETT asked if the interest is in the individual employee who, at least appears to have caused or precipitated the accident, and would that person be tested. Mr. Allen agreed that person would be tested. SENATOR BARTLETT stated a water project was undertaken last summer in Helena (1994). No precautions were taken, and the construction worker was killed in a cave-in accident. Would this be an incident when the supervisor should have been required to be tested for drugs because he/she did not enforce the required construction regulations. Mr. Crichton stated, absent knowing all the details, the supervisor knew the ditch digging procedures were violated and should have been drug

and Air Guard officers and enlisted men/women are quickly sent to the destination. The Montana Militia defends, protects, and preserves lives and property at the call of the Governor. The recent experience of Desert Storm and other regional conflicts have involved Montana National Guards and Reserves. The Guard needs to redefine and strengthen the Federal Veterans Employment and Re-employment Act. The same rights and protection must be afforded Montana members when they are on state active duty. The guideline should mirror the federal guidelines.

Master Sergeant Hagan stated civilians may question the fact that jobs have been denied state militia people. **Master Sergeant Hagan** recounted dismal facts surrounding a Montana National Guard's recent misfortune. An E5 National Guard Sergeant was called by the Governor to fight forrest fires in August, 1994. The Northeastern Montanan had served as a guard member for over four years. He was called up for the first time and left his home, wife, family, and 12 year job to fight the Pryor Mountain Fire and the Yaak Fire in Northwest Montana. The boss called his wife to announce the husband's job was replaced, but he would be offered a lower paying job until he could find employment elsewhere. The SGT returned home to unemployment problems: Loss of employment, demotion as an alternative, possible denial of unemployment benefits, and the expense of legal counsel, no real rewards. The story is true. The sergeant experienced the nightmare no other Montana Militia member should ever experience. The association urges support on HB 114. (EXHIBIT 7).

Jack Walsh, Department of Military Affairs, Chief of Staff, Army National Guard, Helena, MT, asked the committee to support the legislation. For the past ten years there have been twenty-three different occasions, accounting for approximately 32,000 days of active duty to fight forrest fires, floods, earth quakes, and state institution duty. Desert Shield service equated to the federal Re-employment Rights Act. Unfortunately, state service does not provide protection. **Colonel Walsh** urged support of HB 114.

Polly Latrae-Halmas, U.S. Department of Labor, Veterans' Affair Representative, stated she responds to all assistance requests under Title 38 laws for Veterans Re-employment Act. **Ms. Latrae-Halmas** stated she initially received the above described claim, but could do nothing. There was no protection under the federal law; consequently, **Ms Latrae-Halmas** recommended a private attorney. **Ms. Latrae-Halmas** asked the committee to accept HB 114.

Hal Manson, American Legion, Helena, MT, stated the members of the National Guard are also members of the American Legion. The primary purpose of the Legion is to support a strong military attitude in the country. Security is very important. The National Guard is a good, inexpensive method to train and ready people for necessary active service. However, if obstacles are

put in the way, the effectiveness of the Guard is jeopardized. Mr. Manson urged support of HB 114.

Opponents' Testimony:

None.

Informational Testimony :

None.

Questions From Committee Members and Responses:

SENATOR VAN VALKENBURG asked Colonel Walsh how many people were called to active duty for the past two years and for what length of time were they put on active duty. Colonel Walsh answered that from July, 1994 to September, 1994, there were 12,102 work days. From August of 1992 to August 1993... . Colonel Walsh provided statistical tables (EXHIBIT 8).

SENATOR BENEDICT asked Mr. Hagan if legislation would result in a detrimental situation for people who are enlisted in National Guard, specifically those who are employed by small businesses. Will the small business owners want to hire National Guard members because of job requirements. Small business people may not be able to afford to hire a National Guard member because of the potential job-loss-days during employment. Mr. Hagan stated the existing language provides for nondiscrimination in hiring practices, based on military membership. The legislation would be strengthened for re-employment purposes. As far as a detriment to employment, the law is patterned after federal law for protection; therefore, it would not be a large detriment. The positive benefits are many.

SENATOR AKLESTAD asked if prior legislation pertained to the same topic. Mr. Hagan stated he has not been involved in the legislation for a long period of time. His service began in the 1993 Special Session; therefore, he was not able to give a historic perspective at this time.

CHAIRMAN KEATING asked REP. AHNER about the House committee hearing. Did the Chamber of Commerce or the NFIB, or any employer organization testify. REPRESENTATIVE AHNER stated none of the groups lobbied against HB 114.

Closing by Sponsor:

REPRESENTATIVE AHNER stated appreciation for HB 114's Legislative assurance that Montana National Guards will continue to fight forrest fires, etc., and no members will fear that they will be denied employment because of their absence, due to serving the people of Montana.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE February 2, 1995

[illegible]

SEN:1995
wp.rollcall.man
CS-09

Stillwater Mining Company Statement on Senate Bill 201

Senate Labor and Employment Relations Committee-
Thursday February 2, 1995

Mr. Chairman, Senator Bartlett and Members of the Committee:

My name is Ward Shanahan. I am a lawyer from Helena who has represented Stillwater Mining Company as a lawyer and a lobbyist for more than 13 years. Stillwater Mining Company requested Senator Burnett to sponsor Senate Bill 201.

Let me first give you some background on Stillwater Mining Company. Stillwater Mining is the successor to two partnerships owned by Chevron USA Inc. and Manville Mining Company. These partnerships began their interest in Montana in 1981 following exploration activities by Manville Mining to outline what is now known as the "Stillwater Complex". The company's principal office is located at HC 54, Box 365, Nye, Montana 59061, Telephone: 406-328-8500.

The Stillwater Complex is the only significant source of platinum, palladium and their associated metals of the platinum group (known as PGMs) outside the Republic of South Africa. It is located in the Beartooth Mountains in southern Montana. Stillwater Mining Company is now a publicly traded company engaged in the exploration, development and mining of this deposit. Mining is located primarily at Nye, Montana, south of Columbus at this time although the company is proceeding with plans to open a second mine south of Big Timber in what is known as "The East Boulder".

Stillwater Mining Company also operates a small electric smelter for the primary recovery of metals from concentrates. This smelter will be expanded as the East Boulder Mine comes on line.

Senate Bill 201--We are here today to talk to you about Senate Bill 201 which deals with Post-Accident Drug Testing as a condition for continued employment. This is an important issue for the company and Mr. Chris Allen will explain the reasons for this in some detail. But first, I would like to tell you about the bill.

Drug Testing of employees in a country like ours, is a complicated problem. This is because it not only involves the company's concern for work place safety, a decent social and work

DATE Feb. 2, 1995

environment for its employees, lost time accidents, ^{SB 201} and work disruption and loss of efficiency and earnings, but it also involves the personal privacy rights, the civil rights of the employees. These must be personally and legally respected and safety methods must be designed with these considerations in mind.

The present Montana law on drug testing is contained in Title 39, Labor, Chapter 2, The employment Relationship, Part 3, General Prohibitions on Employers. The specific section of the law we are attempting to amend here is 39-2-304, the title of which is "Lie Detector test prohibited-regulation of blood and urine testing". A copy is attached to this statement for your examination.

Senate Bill 201 will amend that section by clarifying the exceptions to the prohibition on blood and urine testing, and adding a new exception for cases in which "an employee has been involved in a work-related accident that causes death or personal injury or property damage in excess of \$500".

Federal law pre-empts Montana law with respect to certain regulated industries such as transportation. Employers doing business in Montana not regulated by the transportation statutes are regulated by the statute I have just quoted to you (and attached to this statement). At present 39-2-304, MCA authorizes only limited forms of pre-employment and "suspicion" testing. Periodic testing (annual physical or random) is not permitted. Previous attempts to change this have been met with strenuous opposition by employee organizations and civil rights groups, but in 1991 the law was changed to require the testing procedures set forth in federal regulation under 49 CFR Part 40.

You will also notice that an employer cannot take "adverse action" against an employee if that person presents a "reasonable explanation" or medical opinion indicating that the test results were not caused by alcohol or illegal drug use. Thus, the law contains many safeguards for the employee's rights.

The problem we confront here in SB 201 is the inadequacy of the law in permitting the employer with options to help solve a real and present work place danger to fellow employees and to adopt measures to prevent the recurrence of serious accidents. That is what this bill is all about.

Stillwater Mining Company is regulated by the Federal Mine Safety and Health Act of 1977 which, by definition, makes Stillwater Mining an employer whose work presents hazards which require special training and safety precautions. It believes that the law needs this additional exception to improve its efforts in work place safety. The new exception provides that a sufficient cause must exist for the employer to make "drug testing" a condition for continued employment following a serious accident. The existing exception which deals with the employer's "reason to believe" the employee's faculties are impaired is just not sufficient. It forces the employer to rely alone on "surveillance"

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #1 3.7.4

DATE Feb 2, 1995

and encourages employees to "cover up" their anti-social activities ^{SB 201}
which create a threat to the safety of their fellow employees and
to the employer's work place and property.

We sincerely request your concurrence in giving this bill a
"DO PASS" recommendation.

Ward A. Shanahan
Attorney/Lobbyist
Stillwater Mining Company

Chris Allen
- safety manager - Stillwater.

39-2-304. Lie detector tests prohibited — regulation of blood and urine testing. (1) A person, firm, corporation, or other business entity or representative thereof may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments;

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use, except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987; amd. Sec. 1, Ch. 477, L. 1991.

Cross-References

Right to equal protection of the laws, Art. II, sec. 4, Mont. Const.

Licensing and regulation of polygraph examiners, Title 37, ch. 62.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #1

DATE Feb 2, 1995

BILL NO. 36201

DATE 2-2-95

Possibly due to: SB 201

IMPAIRMENT INDICATORS FOR SUPERVISORS	ALCOHOL	DRUGS	MEDICAL CONDITION
* Flushed face, neck, and/or head	x	x	x
* Dilated pupils	-	x	x
* Constricted pupils	-	x	x
* Redness and irritation around nasal area	-	x	x
* Uncoordinated gait	x	x	x
* Thick, slurred speech	x	x	x
* Poor motor coordination	x	x	x
* Glassy eyes	x	x	x
* Sleepiness and drowsiness	x	x	x
* Jerky movement of eyes	x	x	x
* Redness or red eyes	x	x	x
* Amnesia	x	x	x
* Tremor of fingers and hands	x	x	x
* Disorientation or confusion	x	x	x
* Blank stare appearance	-	x	x
* Odor of glue, solvent, or paint on clothes	-	x	-
* Unusual body posture	-	x	x
* Odor of alcohol or fruity odor on breath, or clothes	x	-	x
* Muscle rigidity	x	x	x
* Difficulty with speech	x	x	x
* Hearing and/or seeing things	x	x	x
* Poor perception of time and distance	x	x	x

IMPAIRMENT INDICATORS FOR SUPERVISORS (CONT.)	ALCOHOL	DRUGS	MEDICAL CONDITION
* Extremely nervous	x	x	x
* Unusually talkative	x	x	-
* Profuse sweating	-	x	x
* Difficulty concentrating	x	x	x
* Use of sun glasses at inappropriate times	x	x	-
* Staggering gait	x	x	x
* Coma	x	x	x
* Convulsions	x	x	x
* Isolation	x	x	x
* Belligerence	x	x	x
* Unable to perform <u>usual</u> routine tasks	x	x	x
* Mood changes	x	x	x
* Odor of burnt rope	-	x	-

DATE 2-2-95SYMPTOMS OF DRUG AND ALCOHOL ABUSE
BILL NO. SB201

This chart indicates the most common primary symptoms of drug abuse. However, all of the signs are not always evident, nor are they the only ones that may occur. Any drug's reaction will usually depend on the person, his/her mood, his/her environment, the dosage of the drug and how the drug interacts with other drugs the abuser has taken or contaminants with the drug.

** LEGEND **

NAR = Narcotic Analgesics
DEPR = Depressants
ALC = Alcohol
MJ = Marijuana

PCP = PCP
PSY = Psychodelics
COC = Cocaine
AMPH = Amphetamines and
other stimulants

PHYSICAL INDICATORS NAR DEPR ALC MJ PCP PSY COC AMPH

GAIT ATAXIA
(STAGGERING)

X X X

DROWSINESS

X X X X X

TALKATIVENESS

X X

SLURRED SPEECH

X X X

RAMBLING SPEECH

X X

EYES DILATED

X X X

CONSTRICTED

X

RED AND
BLOODSHOT

X X

HORIZONTAL NYSTAGMUS
(Rapid eye movement)

X X X

SYMPTOMS OF DRUG AND ALCOHOL ABUSE 2-2-95
(CONT.)BILL NO. SB 201

PHYSICAL INDICATORS NAR DEPR ALC MJ PCP PSY COC AMPH
(CONT.)

VERTICAL NYSTAGMUS
(Rapid eye movement)

X

IMPAIRED COORDINATION

X

X

X

X

X

DISORIENTATION
(TIME & SPACE)

X

X

X

SECRETIVE BEHAVIOR

X

X

X

X

X

X

X

X

NEEDLE MARKS
(OVER VEINS)

X

SYMPTOMS OF DRUG AND ALCOHOL ABUSE
(CONT.)

SENATE LABOR & EMP

EXHIBIT NO. 2

DATE 2-2-95

BILL NO. 58201

COMMON ITEMS FOUND IN ASSOCIATION WITH DRUG AND ALCOHOL ABUSE
(IN RESTROOMS, TRASHCANS, DESKS, LUNCH PAILS, LOCKERS, ETC.)

MATERIAL INDICATORS NAR DEPR ALC MJ PCP PSY COC AMPH

LIQUOR BOTTLES

X

SMALL FOLDED PAPERS,
SMALL PLASTIC BAGS

X

X

X

FOIL PACKETS,
SMALL BOTTLES

X

X

X

ROLLED BILLS,
CUT-OFF STRAWS

X

X

BAGGIES W/VEGETABLE
MATTER

X

SMALL PIPES

X

CIGARETTE PAPERS
WITHOUT TOBACCO

X

EYEDROPPERS,
SYRINGES

X

BURNED SPOON
OR BOTTLE CAPS

X

BLOOD SPOTS ON
HANDS OR ARMS

X

ALLIGATOR CLIPS,
MEDICAL FORCEPS,
OTHER CLIPS

X

Amendments to Senate Bill No. 238
First Reading Copy

Requested by Senator Van Valkenburg
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 7, 1995

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 2-2-95

BILL NO. 55

1. Title, line 5.

Following: "PACKAGE"

Insert: "THROUGH COLLECTIVE BARGAINING"

2. Title, line 6.

Following: "BENEFITS;"

Insert: "PROHIBITING THE COST OF AN ALTERNATIVE BENEFITS PACKAGE
FROM EXCEEDING THE COST OF AN EMPLOYEE'S STATE BENEFITS;"

3. Page 1, lines 14 and 15.

Following: "system" on line 14

Insert: "who is hired into a position that is not permanent and"

Following: "package" on line 15.

Insert: "through a labor organization certified to represent
employees of the university system pursuant to Title 39,
chapter 31. The employer contribution to the alternative
benefits package may not exceed the cost of the benefits
that the employee would otherwise be entitled to through
employment."

4. Page 1, lines 19 and 20.

Following: "system" on line 19

Insert: "who is hired into a position that is not permanent and "

Following: "package" on line 20.

Insert: "through a labor organization certified to represent
employees of the university system pursuant to Title 39,
chapter 31. The employer contribution to the alternative
benefits package may not exceed the cost of the benefits
that the employee would otherwise be entitled to through
employment."



STILLWATER MINING EXHIBIT SNEATE BILL 201

2-2-95

January 29, 1995

Stillwater Mining Company
HC 54, Box 365
Nye, MT 59061

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 2-2-95
BILL NO. SB 201

Attention: Chris Allen

Subject: Drug & Alcohol Testing Information

Dear Mr. Allen:

TIC is committed to keeping our entire workplace drug free. We attribute much of our outstanding safety record to drug and alcohol education and testing. Pre-employment, random, post-accident, and reasonable cause testing are very effective ways of keeping the workplace clean and safe. Random testing combined with an education program helps maintain a drug free environment. Employees know if caught, termination is immediate.

As you requested, TIC has put together D&A statistics concerning random and post-accident testing. It is our hope that this information will be helpful to you.

1991	451 Random, Post-Accident, Pre-employment	8% positive
1992	162 Random	4% positive
	36 Post-Accident	19% positive
1993	250 Random	10% positive
	28 Post-Accident	11% positive
1994	229 Random	6% positive
	37 Post-Accident	16% positive

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

EXHIBIT NO. 5 142
DATE 2-2-95
58807

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763
February 2, 1995

Mr. Chair, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. I'm here today to voice opposition to SB 201.

The language that you are considering to ammend in Section 39-2-304, MCA is puzzling to me. This section of law is the hybrid product of bi-partisan collaboration, the product of numerous legislatures over the last decade. This law is carefully crafted, striking a critical and delicate balance between the constitutionally protected rights of privacy and human dignity and the public safety considerations in the workplace.

I remind you of the Montana Constitution which you all swore an oath to uphold:

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without showing a compelling state interest.

Now you are being asked to consider tinkering with a new amendment (c) subsection (ii) to this law, which unnecessarily opens up revisiting of this controversial issue. What is broken that needs fixing? What is the additional compelling state interest that justifies expanding the law prohibiting lie detector tests and the regulation of blood and urine testing?

SB 201 would expand the law that currently prohibits blood or urine testing except within narrow circumstances. I ask anyone of you to volunteer to submit to such a urine test and to testify how you feel having someone on behalf of your employer watch you urinate into a bottle. After having submitted to such a test, I wonder how many of you would feel such a sampling was an intrusive procedure, invasive to your constitutionally protected rights of privacy and human dignity?

Current law allows testing for certain types of work, for reasonable belief one is impaired on the job, and for regular biennial physicals in jobs involving intrastate commercial transportation. To protect against false positives, laboratory errors, and other extenuating circumstances, procedures must follow strict protocol as outlined in 49 CFR, part 40, as spelled out in Section (2). Section (3) insures a second confirmatory test at employers expense, and Section (4) provides for reasonable explanation or medical opinions when applicable.

Unlike the bill this new language seeks to ammend, this new additional exemption is neither narrowly tailored nor in my opinion very well crafted. I want to believ that it was not the sponsors intent for this to be so imprecise and overbroad.

For example, how do you define "involved in" on line 26? Does one have to cause the accident or is it enough for someone to be tangental to the scene of the accident? The way it reads, I interpret this new language to mean there does not have to be any reason for the employer to believe that the employee's faculties are impaired. Is that the intent? When is this testing to occur? Is it a one-time test within a certain time frame or is it an open-ended opportunity for an employer to test employees who might have dropped a tool or had a minor vehicular mishap?

Absent a compelling flaw in existing law, this bill addresses a fictional problem. Finally, I would hope that those of you who understand the message of the electorate to get the government out of our private lives, would not be tempted to spend more time and energy on this bill. For all of these reasons, unless you have been overwhelmingly convinced otherwise from testimony presented today, I urge you to vote no on SB 201.

SENATE LABOR & INDUSTRY COMMITTEE
EXHIBIT NO. 5 201
DATE 2-2-95
BILL NO. SB 201

OCAW

Oil, Chemical & Atomic Workers
International Union, AFL-CIO



Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104
406/669-3253

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6 192
DATE 2-2-95
BILL NO. SB 201

SB 201

Statement of:

Dan C. Edwards, International Representative
Oil, Chemical & Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

D. Edwards

406-669-3253

STATEMENT FOR THE SENATE LABOR COMMITTEE
February 2, 1995, 1:00 p.m.
TOM KEATING, CHAIR

Senator Keating and Members of the Committee:

My name is Dan C. Edwards, International Representative for the Oil, Chemical and Atomic Workers International Union, AFL-CIO (OCAW). OCAW represents over 550 members in the State of Montana, including employees of the Conoco and Exxon refineries in Billings, the Cenex refinery in Laurel, the Montana Refining Company in Great Falls, and Montana Power Company in Cut Bank and Shelby.

This statement is to indicate OPPOSITION to SB 201.

SB 201 would, if enacted, amend 39-2-304 to allow blood or urine testing when "an employee has been involved in a work-related accident that causes death or personal injury or property damage in excess of \$500.00".

I regret I can not be present in person to testify on this matter, but a previously scheduled arbitration hearing in Cody, Wyoming, prevents me from doing so. Some of you may recall that I was very involved in the legislative process during the 1991 session when 39-2-304 was amended into its present form. Steve Browning and I played a major role in working out the compromise under what was then SB 31 that was eventually adopted. The result is that for the past four years we in Montana have enjoyed a fair and reasonable drug and alcohol testing law that protect the legitimate interests of employers to have employees who are not impaired by drugs or alcohol, while at the same time protecting the individual privacy rights of employees

Regarding the proposed change sought by SB 201, it simply isn't necessary. Current law allows testing when "the employer has reason to believe that an employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use". That allows testing in all the situations set forth in the proposed amendment, as long as the employer has reason to believe the employee's faculties are impaired. The proposed change is far too reaching. When is an employee "involved"? Why test employees if the cause of the accident is known, as they are in most cases?

While I strongly believe that a DO NOT PASS is the best action for this unnecessary proposal, I would be more than happy to work with this committee or the sponsor to attempt to work out more acceptable language if that is desired.

Thank you for your consideration of my testimony.

#####

DATE

February 2, 1995

SENATE COMMITTEE ON

Labor & Employment Relations

BILLS BEING HEARD TODAY:

SB 201 * HB 114 * SB 180

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Polly LATRAY-Halmes	111 N. LAST CHANCE #4 D DOL - VETS Helena	HB 114	✓	
Rock Creek Springs TK Wyoming Inc. Box 3300 Casper, WY 82402	Stillwater Mining	SB 201	✓	
Ward Jeanette	STILLWATER MINING	201	✓	
Christopher H. Allen	NYE MONTANA STILLWATER MINING	201	✓	
Ron Wetsch	DRUMMOND Public Schools	180	✓	
Joslyn MURPHY				
JOHN F. WALSH	MT NAT. GUARD	114	✓	
ROGER A. HAGAN HELENA	ENLISTED ASSOCIATION AUTO OFFICER ASSOC. N.G.	114	✓	
Aae Manson	Helena American Legion	114	✓	
Rich Shaffer	Shelds Volby AS	180	✓	
Matl McKamey		201		
Morris Van Campen	Glendine School Board	SB 180	✓	
Charles R. Brooks	Billing's Chamber	SB 201	✓	
Tom Danbert	Ash Grove Cement Co	SB 201	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 2, 1995SENATE COMMITTEE ON Labor & Employment RelationsBILLS BEING HEARD TODAY: SB 201 * HB 114 * SB 180

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Scott Crichton	ACLU	201		✓
Michael Keady	MSBA	180	X	
Gerald W. Gough	SCHOOL TRUSTEE	180	✓	
Don Waldron	MREA SB	180	✓	
ERIC FEAVER	MEA	SB180		✓
Steve Turkiewicz	Mt Auto Dealers Assn	SB201	X	
David Owen	Mt Chamber	SB201	✓	
Chip Erdmann	MREA	SB180	X	
Chip Erdmann	Self, Ass Guard Members	HB114	X	
Rodney Lue	Hardin Public School	SB180	X	
Jim Foster	MREA	SB180	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

identify the contracts that are "let bids", which is a contract procedure. The threshold is \$25,000, and anything over that amount is a "let to bid contract". The main concern is the word "project", which does not show up often in statutes.

Vote:

The motion to amend SB 85 (SB008501.AEM) CARRIED UNANIMOUSLY.

Discussion:

SENATOR BARTLETT stated the amendment concern provisions with tax exempt bonds. There are instances in which the state "lets" the contract. SENATOR BENEDICT is trying to hold local governments out from the prevailing wage requirement, but to leave those in place at the state level. SENATOR BARTLETT stated the original introduced bill deals with tax exempt bonding provisions. The amendments are designed to specify the state would still be subject to prevailing wage, even if the funding mechanism was the tax exempt bonds.

SENATOR BENEDICT stated resistance to the amendment. After discussing the amendments with Senator Bartlett, there is concern about hospitals. There are many expensive bonding projects involving hospitals. The possibility still exists that these amendment will pull them into the "web". SENATOR BENEDICT expressed concern, stating it is not his contention to force a collective bargaining agreement into law, at anytime. Senate Bill 85 does that by saying "unless the contractor performing the work is entered into a collective bargaining agreement, covering the work performed.

SENATOR BARTLETT asked for clarification. Eddy McClure stated the language is existing law. The only change was to change the word to "public works". The language was stricken in the original bill because of SENATOR BENEDICT'S request. Even if there was a small amount of state money in the school project, SENATOR BENEDICT wanted to make sure the majority of the money came from local voters, and the project would not be tied back to the state in any way.

SENATOR BENEDICT MOVED SB 85 DO PASS AS AMENDED. A roll call vote was taken. The MOTION CARRIED, with SENATORS BARTLETT, VAN VALKENBURG, WILSON, AND KEATING voting no.

EXECUTIVE ACTION ON SB 201

Motion:

SENATOR BURNETT MOVED SB 201 DO PASS.

Motion:

SENATOR BARTLETT moved DO PASS AS AMENDED and requested amendment SB020101.AEM be distributed (EXHIBIT 7).

Discussion:

SENATOR BARTLETT explained the current bill is broad. The intent of the amendment was to narrow the bill to employees who may have caused accident to be subject to post accident drug testing. Amendment 3 would strike the words on lines 26 "employee has been involved in" and replace "employees' act or failure to act as the direct cause of a work related accident. Subject to drug testing findings would be a criteria for continuation of employment.

SENATOR BARTLETT stated she talked with Mr. Allen about increasing the amount of property damage from \$500 to \$5000. If there was reason to believe an employee had caused an accident and a drug test was done within a relative short period of time, and the employee was found innocent, the accident records would be removed from the employee's work record and be destroyed.

SENATOR BURNETT stated mining accidents, for the most part, exceed \$5,000, so \$500 is not that great of an amount. SENATOR BAER expressed concern over the term "direct cause". An approximate cause could be more correct than the "direct cause". If the committee limits the wordage to "direct cause", the committee is limiting the intent to reach anyone who is under the influence, and somehow contributes to the injury. SENATOR BAER proposed to strike "direct" and insert "proximate".

Vote:

SENATOR BURNETT moved the amendment. The amendment PASSED UNANIMOUSLY.

Discussion:

SENATOR BENEDICT stated \$2,500 would be a good compromise. SENATOR BENEDICT stated he would to strike \$5,000, and insert \$2,500.

Motion:

SENATOR BENEDICT moved to amend SB 201.

DISCUSSION:

SENATOR BARTLETT resisted the amendment. \$5,000 property damage is minimal, given today's cost. An individual subjected to a drug test, as a condition for continuing employment, is a grave situation. The accidents need to be a significant impact.

The amendment passed, with four senators voting no.

SENATOR VAN VALKENBURG stated Mr. Dan Edwards is available to offer testimony concerning proposed drug testing changes.

Dan Edward, Oil, Chemical and Atomic Workers, Billings, MT. Mr. Edwards stated in last session's testimony the committee was willing to go to \$10,000. In a heavy industrial setting, particularly in the mines and refineries, It takes very little to get to a \$5,000. The language "where the employers has reason to believe" was more than adequate. Mr. Edwards stated what is not wanted is for everyone having to offer a urine specimen.

VOTE:

The DO PASS AS AMENDED motion for SB 201 CARRIED, with SENATORS BARTLETT AND VAN VALKENBURG, voting NO.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE _____

FEBRUARY 9, 1995

[illegible]

SEN:1995

wp.rollcall.man

CS-09

DATE FEB 9 1995Amendments to Senate Bill No. 201 BILL NO. SB 201
First Reading CopyRequested by Senator Bartlett
For the Senate Committee on Labor and Employment RelationsPrepared by Eddy McClure
February 8, 1995

1. Title, line 5.

Following: "AN"

Strike: "EMPLOYEE HAS BEEN INVOLVED IN"

Insert: "EMPLOYEE'S ACTS OR FAILURE TO ACT IS THE DIRECT OR
PROXIMATE CAUSE OF"

2. Title, line 6.

Strike: "\$500"

Insert: "\$2,500; PROVIDING FOR REMOVAL OF REQUIRED TEST FROM
EMPLOYEE'S WORK RECORD"

3. Page 1, line 26.

Following: "an"Strike: "employee has been involved in"Insert: "employee's acts or failure to act is the direct or
proximate cause of"

4. Page 1, line 27.

Strike: "\$500"

Insert: "\$2,500"

5. Page 2, line 8.

Following: "tests."

Insert: "The written record of a blood or urine test of an
employee who is required to submit to testing pursuant to
subsection (1)(c)(ii) and whose acts or failure to act is
subsequently found not to be the direct or proximate cause
of a work-related accident must be removed from the
employee's work record and be destroyed."

DATE Feb. 9, 1995
BILL NO. _____

DATE February 9, 1995
SENATE COMMITTEE ON Labor + Employment Relations
BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>Dan L. Edwards</u> <u>DOB 21835</u> <u>Bellingham, WA 99104</u> <u>406-669-3253</u>	<u>OCAWUM</u> <u>Oil Chemical &</u> <u>Atomic Workers</u> <u>2nd Union</u>	<u>SB201</u>		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

CHAIRMAN SIMON wanted to clarify when a product is received from the distillery is the freight costing added. There is also a 10% and 16% license tax and an excise tax and then the 40% markup. Mr. Blewett said it was the reverse. After freight there is a 40% markup and on top of markup there is a 26% tax, 10% of which is the license.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 243

Opening Statement by Sponsor:

SEN. BILL WILSON, SD 22, Cascade County, said this bill simply updates the skiers responsibility code to encompass snow boarders. The old skiers responsibility code that is mandatory for every ski area to possess is posted in a prominent location.

Proponents' Testimony:

Pat Melby, Montana Skiers Association, said he supported this bill.

Opponents' Testimony:

None.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON SB 243

Motion/Vote: REP. JACK HERRON MOVED SB 243 BE CONCURRED IN.
Motion carried 18-0.

HEARING ON SB 201

Opening Statement by Sponsor:

SEN. JIM BURNETT, SD 12, Carbon County, said this bill concerns mining safety for workmen. The bill was originally drafted which would allow the company to test an employee for drugs following an accident which has caused a person personal injury or property damage exceeding \$500. He then distributed amendments.

Proponents' Testimony:

Ward Shanahan, Stillwater Mining Company, said this is an important issue for the company. Drug testing of employees in a country like the United States is a complicated problem. This is because it not only involves the company's concern for work place safety, a decent social and work environment for its employees, lost time accidents, and work disruption and loss of efficiency and earnings, but it also involves the personal privacy rights, the civil rights of the employees. These must be personally and legally respected and safety methods must be designated with these considerations in mind. The mere happening of an accident that causes death or personal injury should be sufficient cause to allow an employer to require "drug testing" as a condition for continued employment following a serious accident. EXHIBIT 11

Chris Allen, Manager of Safety and Environmental Affairs, Stillwater Mining Company, provided statistics from a major contractor. At the present time, the size of their operation is 2000 tons a day. PIC is the general contractor which is a nation-wide contractor and they operate in all states. They have provided statistics. In states where it is allowed, they do drug testing for cause and random drug testing. Stillwater is not interested in doing random testing but are simply interested in testing individuals when there is an accident. The genesis of this bill came about in March 1994 when Stillwater had a seminar for all of its employees on how to determine if somebody is under the influence of drugs. The upshot of that seminar or the way of certain detection was to look at the size of their pupils. He then provided a letter from the Industrial Company Wyoming, Inc. and an impairment indicator for supervisors list. EXHIBITS 12 and 13

REP. ALVIN ELLIS favored the bill.

Jim Tutweiler, Montana Chamber of Commerce said this bill will be beneficial to many Montana businesses. He also said the human resource is by far the most important asset. This bill will benefit other employees who are not a victim of drug usage in that having this kind of measure in place will promote a safer work place. It is not the managers who will be injured, it is other workers that are going to be at risk. If accidents can be reduced and accidents dealt with in a forward way, there can be an impact on productivity which is a factor which all can share in. The bill is a win/win for people at the working and management level and combined together.

TAPE 2, SIDE B

Don Allen, Wood Products Industry, said there are real dangers involved in terms of the preciseness of the movement of the parts of various things people are working with. Safety in the work place is a key part in any legislation in terms of trying to make it safer and cut the costs.

REP. NORM MILLS said he favored the bill.

Opponents' Testimony:

Don Judge, Montana AFL-CIO, said this legislation is unnecessary. Not one specific example was pointed out to the committee by any of the proponents. His organization does not condone drug usage, they understand that one person's drug usage on the job provides a dangerous situation for other employees who are working with that specific employee. There is a situation where the employers are asking for a license which may be used unfairly and perhaps abusively against the work force. Under current law an employer, if he has reason to believe that an employee's faculties are impaired on the job as a result of alcohol consumption or illegal drugs, can require a test. They think this is poorly drafted legislation and is not needed. The sponsors have not demonstrated a need for this legislation.

Questions From Committee Members and Responses:

REP. ELLIS asked if it were possible that every time they had come before the committee concerning safety issues they have testified in a manner which places all of the responsibility for safety on the employer and almost none on the employee. Mr. Judge said no. He indicated he had said it was the employee's responsibility to participate in that process. Employees have a great responsibility for promoting a safe workplace.

REP. ELLIS said that placing the threat of testing on employees is a huge difference on the risk they are going to be willing to take with drugs before they go to work. Mr. Shanahan said that was the intent.

REP. CARLEY TUSS asked what their experience was with personal stress. Chris Allen said there was one accident regarding personal stress. The employer is not notified by the employee he is going to EAP.

REP. JON ELLINGSON said under the current statute they may require anyone to submit to a blood or urine test in hazardous work environments and questioned if Stillwater fell under that statute. Chris Allen said it was hazardous. REP. ELLINGSON said if that were the case and employees could be tested why is the additional legislation necessary. Chris Allen said currently there was a presumption that the person requesting the test has to presume an impairment exists.

Closing by Sponsor:

The sponsor closed.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-2-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority			
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella			
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

EXHIBIT 11DATE 3-2-95HB SB 201Stillwater Mining Company Statement on Senate Bill 201

House Business and Labor Committee-
Thursday March 2, 1995

Mr. Chairman, Members of the Committee:

My name is Ward Shanahan. I am a lawyer from Helena. I've represented Stillwater Mining Company as a lawyer and a lobbyist for more than 13 years. Stillwater Mining Company requested Senator Burnett to sponsor Senate Bill 201.

Let me first give you some background on Stillwater Mining Company. Stillwater Mining is the successor to two partnerships owned by Chevron USA Inc. and Manville Mining Company. These partnerships began their interest in Montana in 1981 following exploration activities by Manville Mining to outline what is now known as the "Stillwater Complex". The company's principal office is located at HC 54, Box 365, Nye, Montana 59061, Telephone: 406-328-8500.

The Stillwater Complex is the only significant source of platinum, palladium and their associated metals of the platinum group (known as PGMs) outside the Republic of South Africa. It is located in the Beartooth Mountains in southern Montana. Stillwater Mining Company is now a publicly traded company engaged in the exploration, development and mining of this deposit. Mining is located primarily at Nye, Montana, south of Columbus at this time although the company is proceeding with plans to open a second mine south of Big Timber in what is known as "The East Boulder".

Stillwater Mining Company also operates a small electric smelter for the primary recovery of metals from concentrates. This smelter will be expanded as the East Boulder Mine comes on line. The company is also planning to construct a Precious Metals Refinery in the near future so that all of its operation will be located in Montana.

Senate Bill 201--We are here today to talk to you about Senate Bill 201 which deals with Post-Accident Drug Testing as a condition for continued employment. This is an important issue for the company and Mr. Chris Allen will explain the reasons for this in some detail. But first, I would like to tell you about the bill.

Drug Testing of employees in a country like ours, is a complicated problem. This is because it not only involves the company's concern for work place safety, a decent social and work environment for its employees, lost time accidents, and work

disruption and loss of efficiency and earnings, but it also involves the personal privacy rights, the civil rights of the employees. These must be personally and legally respected and safety methods must be designed with these considerations in mind.

The present Montana law on drug testing is contained in Title 39, Labor, Chapter 2, The employment Relationship, Part 3, General Prohibitions on Employers. The specific section of the law we are attempting to amend here is 39-2-304, the title of which is "Lie Detector test prohibited-regulation of blood and urine testing". A copy is attached to this statement for your examination.

Senate Bill 201 will amend that section by clarifying the exceptions to the prohibition on blood and urine testing, and adding a new exception for cases in which "an employee has been involved in a work-related accident that causes death or personal injury or property damage."

At present 39-2-304, MCA authorizes only limited forms of pre-employment and "suspicion" testing. Periodic testing (annual physical or random) is not permitted. In 1991 the law was changed to require the testing procedures set forth in federal regulation under 49 CFR Part 40.

You will also notice that the law provides that an employer cannot take "adverse action" against an employee if that person presents a "reasonable explanation" or medical opinion indicating that the test results were not caused by alcohol or illegal drug use. Thus, the law contains many safeguards for the employee's rights.

The problem we need to have solved by SB 201 is the inadequacy of options available to the employer to identify and reduce drug use. This will help eliminate a real and present work place danger to fellow employees. It will allow the company to adopt measures to prevent the recurrence of serious accidents. That is what this bill is all about.

Congress, as well as you the legislature have regulated the Stillwater Mining Company by the Federal Mine Safety and Health Act of 1977 which, by definition, makes Stillwater Mining an employer whose work presents hazards which require special training and safety precautions. There are many other labor laws that place a duty on the employer to provide a safe place to work. That's what we're trying to do with SB 201. However the Senate made some amendments which made this job a little more difficult. We would like them restored in part and I have a prepared amendment to do that.

The mere happening of an accident that causes death or personal injury should be sufficient cause to allow an employer to require "drug testing" as a condition for continued employment following a serious accident. We don't agree with the Senate amendment that inserted "direct and proximate" cause as a

EXHIBIT 11
DATE 3-2-95
SB 201

requirement to do these tests. Our supervisors aren't lawyers they're miners. To require a legal determination of "direct cause" defeats the whole purpose of the bill. The resulting argument over who is to blame exposes the employer to unnecessary liability. It impedes the identification of a real threat to the safety of fellow employees and to the employer's work place and property. The company is in a hazardous business it needs a proper tool to control the drug hazard. You have directed them to do this, please let them do it!

We sincerely request your concurrence in these amendments and that as amended you'll give the bill a "DO PASS" recommendation.

Ward A. Shanahan
Attorney/Lobbyist
Stillwater Mining Company

PROPOSED AMENDMENTS TO SB 201

Introduced by Burnett and others

Amend the Third Reading copy of Senate Bill 201 as follows:

Page 1 Lines 5 and 6, in the Title of the Bill

Strike: "EMPLOYEES ACTS OR FAILURE TO ACT IS THE DIRECT OR
PROXIMATE CAUSE"

Insert: "EMPLOYEE HAS BEEN INVOLVED IN"

Page 1 Line 7, in the Title of the Bill

Strike: \$2,500

Insert: \$1,000

Page 1 Lines 28 and 29

Strike: "EMPLOYEES ACTS OR FAILURE TO ACT IS THE DIRECT OR
PROXIMATE CAUSE OF"

Insert: "employee has been involved in"

Page 1 Line 30

Strike: "\$2,500"

Insert: "\$1,000"

And as amended DO PASS

Ward A. Shanahan
Stillwater Mining Company
33 South Last Chance Gulch
P.O. Box 1715
Helena, Montana 59624
Tel: 406-442-8560

SB 201

Any employer violating the provisions of this section shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine in any amount not exceeding \$100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

Cross-References "Misdemeanor" defined, 45-2-101.

"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.

302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer or the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

Cross-References
Exemption of wages from execution, 3-614.

303. Deception as to character of employment, conditions of employment or existence of labor dispute prohibited. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change their place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to disclose in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of proposed employment when in fact such strike, lockout, or other trouble actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

Any workman influenced, induced, persuaded, or engaged through or means of any of the things prohibited by subsection (1) of this section shall be entitled to action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any action recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

Cross-References "Employment" defined, 39-2-101.
Attorneys' fees, Title 25, ch. 10, part 3.

304. Lie detector tests prohibited — regulation of blood and urine testing. (1) A person, firm, corporation, or other business entity or representative thereof may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test; or
(b) as a condition for employment, any person to submit to a blood or urine test except for employment in:

(i) hazardous work environments; or
(ii) jobs the primary responsibility of which is security, public safety, or

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use, except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101 and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987; amd. Sec. 1, Ch. 477, L. 1991.

Cross-References

Right to equal protection of the laws, Art. II, sec. 4, Mont. Const.
Licensing and regulation of polygraph examiners, Title 37, ch. 62.

"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than \$500.

(3) The department of labor and industry or a person harmed by violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

Cross-References

Injunctions, Title 27, ch. 19.
"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

TIC The
Industrial Company
Wyoming, Inc.

STILLWATER MINING EXHIBIT SNEATE BILL

2-2-95

January 29, 1995

Stillwater Mining Company
HC 54, Box 365
Nye, MT 59061

Attention: Chris Allen

Subject: Drug & Alcohol Testing Information

Dear Mr. Allen:

TIC is committed to keeping our entire workplace drug free. We attribute much of our outstanding safety record to drug and alcohol education and testing. Pre-employment, random, post-accident, and reasonable cause testing are very effective ways of keeping the workplace clean and safe. Random testing combined with an education program helps maintain a drug free environment. Employees know if caught, termination is immediate.

As you requested, TIC has put together D&A statistics concerning random and post-accident testing. It is our hope that this information will be helpful to you.

1991	451 Random, Post-Accident, Pre-employment	8% positive
1992	162 Random	4% positive
	36 Post-Accident	19% positive
1993	250 Random	10% positive
	28 Post-Accident	11% positive
1994	229 Random	6% positive
	37 Post-Accident	16% positive

EXHIBIT

DATE

HB

STILLWATER MINING

EXHIBIT

SENATE BILL201

2-2-95

TIC WYOMING, INC.

LOST TIME ACCIDENT AND SEVERITY RATES

	Lost Time Accident Rate		Severity Rate	
	<u>TIC</u>	<u>National Average</u>	<u>TIC</u>	<u>National Average</u>
1991	4.78	6.	65.16	160.1
1992	1.85	6.3	20.11	144.6
1993	0	6.5	0	147.1
1994	0	n/a	0	n/a
1994 National averages have not been calculated.				

EXHIBIT 13
 DATE 3-2-95
 NB SB 201

Possibly due to:

IMPAIRMENT INDICATORS FOR SUPERVISORS	ALCOHOL	DRUGS	MEDICAL CONDITION
* Flushed face, neck, and/or head	x	x	x
* Dilated pupils	-	x	x
* Constricted pupils	-	x	x
* Redness and irritation around nasal area	-	x	x
* Uncoordinated gait	x	x	x
* Thick, slurred speech	x	x	x
* Poor motor coordination	x	x	x
* Glassy eyed	x	x	x
* Sleepiness and drowsiness	x	x	x
* Jerky movement of eyes	x	x	x
* Redness or red eyes	x	x	x
* Amnesia	x	x	x
* Tremor of fingers and hands	x	x	x
* Disorientation or confusion	x	x	x
* Blank stare appearance	-	x	x
* Odor of glue, solvent, or paint on clothes	-	x	-
* Unusual body posture	-	x	x
* Odor of alcohol or fruity odor on breath, or clothes	x	-	x
* Muscle rigidity	x	x	x
* Difficulty with speech	x	x	x
* Hearing and/or seeing things	x	x	x
* Poor perception of time and distance	x	x	x

Possibly due to:

IMPAIRMENT INDICATORS FOR SUPERVISORS (CONT.)	ALCOHOL	DRUGS	MEDICAL CONDITIO
* Extremely nervous	x	x	x
* Unusually talkative	x	x	-
* Profuse sweating	-	x	x
* Difficulty concentrating	x	x	x
* Use of sun glasses at inappropriate times	x	x	-
* Staggering gait	x	x	x
* Coma	x	x	x
* Convulsions	x	x	x
* Isolation	x	x	x
* Belligerence	x	x	x
* Unable to perform <u>usual</u> routine tasks	x	x	x
* Mood changes	x	x	x
* Odor of burnt rope	-	x	-

EXHIBIT 13
DATE 3-2-95
YL SB 201

SYMPTOMS OF DRUG AND ALCOHOL ABUSE

This chart indicates the most common primary symptoms of drug abuse. However, all of the signs are not always evident, nor are they the only ones that may occur. Any drug's reaction will usually depend on the person, his/her mood, his/her environment, the dosage of the drug and how the drug interacts with other drugs the abuser has taken or contaminants with the drug.

** LEGEND **

NAR = Narcotic Analgesics
DEPR = Depressants
ALC = Alcohol
MJ = Marijuana

PCP = PCP
PSY = Psychodelics
COC = Cocaine
AMPH = Amphetamines and
other stimulants

PHYSICAL INDICATORS	NAR	DEPR	ALC	MJ	PCP	PSY	COC	AMPH
GAIT ATAXIA (STAGGERING)		X	X		X			
DROWSINESS	X	X	X	X	X			
TALKATIVENESS							X	X
SLURRED SPEECH	X	X	X					
RAMBLING SPEECH				X		X		
EYES DILATED						X	X	X
CONSTRICTED	X							
RED AND BLOODSHOT			X	X				
HORIZONTAL NYSTAGMUS (Rapid eye movement)		X	X		X			

SYMPTOMS OF DRUG AND ALCOHOL ABUSE
(CONT.)

PHYSICAL INDICATORS (CONT.)	NAR	DEPR	ALC	MJ	PCP	PSY	COC	AMPH
VERTICAL NYSTAGMUS (Rapid eye movement)						X		
IMPAIRED COORDINATION	X	X	X	X	X			
DISORIENTATION (TIME & SPACE)					X	X	X	
SECRETIVE BEHAVIOR	X	X	X	X	X	X	X	X
NEEDLE MARKS (OVER VEINS)	X							

EXHIBIT 13DATE 3-2-9571 SB 201SYMPTOMS OF DRUG AND ALCOHOL ABUSE
(CONT.)

=====

COMMON ITEMS FOUND IN ASSOCIATION WITH DRUG AND ALCOHOL ABUSE
(IN RESTROOMS, TRASHCANS, DESKS, LUNCH PAILS, LOCKERS, ETC.)

=====

MATERIAL INDICATORS NAR DEPR ALC MJ PCP PSY COC AMPH

=====

LIQUOR BOTTLES

X

SMALL FOLDED PAPERS,
SMALL PLASTIC BAGS

X

X

X

FOIL PACKETS,
SMALL BOTTLES

X

X

X

ROLLED BILLS,
CUT-OFF STRAWS

X

X

BAGGIES W/VEGETABLE
MATTER

X

SMALL PIPES

X

CIGARETTE PAPERS
WITHOUT TOBACCO

X

EYEDROPPERS,
SYRINGES

X

BURNED SPOON
OR BOTTLE CAPS

X

BLOOD SPOTS ON
HANDS OR ARMS

X

ALLIGATOR CLIPS,
MEDICAL FORCEPS,
OTHER CLIPS

X

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 3-2-95

BILL NO. SB 201 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppos
Jim T. T. WILKER	MT CHAMBER Bills 11	☒	
Ward D. D. D.	Stillwater Min	AMC 11 ☒	
Christopher Allen	Stillwater Mining Co.	☒	
Don Allen	MT Wood Product Assoc	☒	
Don Judge	MT STATE AFL-CIO		☒

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Coty said implementation of rules would not be necessary because of the statutory nature of the act. Therefore they would be required. CHAIRMAN SIMON said rules would define. That would address the problem which REP. ELLINGSON commented on. They should tell people what the truth was. Mr. Coty said if the Commission was granted the rulemaking authority to implement the concerns this could be done.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON SB 177

Motion: REP. ELLIS MOVED SB 177 BE CONCURRED IN.

Discussion:

REP. MILLS stated the method of setting charges is so different between different hospitals but this is not going to cure the problem. This bill is just going to narrow the problem down.

REP. VICKI COCCHIARELLA said she had a license to sell this type of insurance and this bill goes a long way in making it a much easier, consumer-friendly product to purchase. It is not necessary to have the language added to this bill and would not propose any amendments.

REP. ELLIS said he would not be in favor of any rulemaking authority and let the bill stand.

CHAIRMAN SIMON said he had asked the question to determine if there was rulemaking authority and the commission does not have it nor is it the intention of the committee to give rulemaking authority.

Vote: Motion carried 18-0.

EXECUTIVE ACTION ON SB 216

Motion/Vote: REP. JOE BARNETT MOVED SB 216 BE CONCURRED IN.
Motion carried 18-0.

EXECUTIVE ACTION ON SB 201

Motion: REP. ELLIS MOVED SB 201 BE CONCURRED IN. REP. ELLIS MOVED THE AMENDMENTS.

Vote: Motion carried to adopt the amendments 18-0.

Motion: REP. ELLIS MOVED SB 201 BE CONCURRED AS AMENDED.

Discussion:

REP. CARLEY TUSS said she was concerned if the approach is that a person may have difficulties unrelated to drugs or alcohol which would be equally responsible.

Motion: REP. TUSS MOVED A CONCEPTUAL AMENDMENT.

Discussion:

REP. MILLS stated he was in sympathy with REP. TUSS' amendment but it does not fit the title of the bill and it cannot be effectively put into the bill.

REP. DEVANEY said the attempt of this bill is to test people on the job. It is difficult to make a reason for a test.

REP. BARNETT said he felt the concerns of the amendment were already addressed.

REP. ELLIS stated he opposed the amendment because it makes the bill "more empty" as far as getting the bill to pass. This bill is clear cut and the mine situation is very dangerous work and this bill is prevention rather than remedial action. There will be some tests done.

REP. TUSS stated she wished to withdraw the amendment.

Motion: REP. EWER MOVED AN AMENDMENT TO LIMIT THE BILL TO ALL WORK ENVIRONMENTS.

Discussion:

REP. ELLINGSON suggested this bill should also include train operators or jobs of that nature where it is essential public safety is protected. There is a public need for this kind of testing in hazardous work environments and other areas where public safety is of primary concern. If an individual is involved in an accident then the evasive procedures are triggered. But the other non-hazardous work environments or environments where there is no impact or no important compelling impact on public safety, these evasive procedures should not be involved.

REP. EWER withdrew his amendment.

Motion: REP. EWER OFFERED A SUBSTITUTE AMENDMENT WHICH WOULD INCLUDE HAZARDOUS WORK ENVIRONMENTS AND PUBLIC SAFETY.

Discussion:

CHAIRMAN SIMON questioned if the public employee could be described as an employee in all three of the categories.

Steve Maly said hazardous work environment is not a defined term even though it exists in statute.

REP. ELLIS stated this presented a real problem and said it was better to include the others.

REP. EWER said it may not be a defined term.

REP. MILLS said the whole purpose of having this bill is to define the cause of accidents related to alcohol and drugs. Whether it is a hazardous environment or one employee is endangering the lives of several other people by the use of drugs or alcohol the bill should be left alone.

Vote: A roll call vote was taken which failed 7-11 with REPS. SIMON, PAVLOVICH, COCCHIARELLA, ELLINGSON, EWER, LARSON and TUSS voting yes.

Discussion:

REP. TUSS stated there were no directions for the NITA certified laboratory. The reason that is important is that those laboratory standards are established and they have certifications which are uniform.

Motion: REP. TUSS MOVED AN AMENDMENT INCLUDING THE STATEMENT REQUIRING A NITA CERTIFIED FACILITY.

TAPE 1, SIDE B

Vote: Motion carried to adopt the Tuss amendment 17-0 with REP. HERRON abstaining from voting.

Motion/Vote: REP. ELLIS MOVED SB 201 BE CONCURRED IN AS AMENDED. Motion carried 12-6 with REPS. ELLINGSON, TUSS, EWER, LARSON, COCCHIARELLA and PAVLOVICH voting no.

HEARING ON SB 228

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, Missoula County, said this bill was an act prohibiting a partner from canceling or having canceled an insurance policy issued to the partnership without the consent of a majority of the partners.

Proponents' Testimony:

Frank Coty, State Auditor's Office, supported the bill.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-3-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	✓		
Rep. Norm Mills, Vice Chairman, Majority	✓		
Rep. Bob Pavlovich, Vice Chairman, Minority	✓		
Rep. Joe Barnett	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Charles Devaney	✓		
Rep. Jon Ellingson	✓		
Rep. Alvin Ellis, Jr.	✓		
Rep. David Ewer	✓		
Rep. Rose Forbes	✓		
Rep. Jack Herron	✓		
Rep. Bob Keenan	✓		
Rep. Don Larson	✓		
Rep. Rod Marshall	✓		
Rep. Jeanette McKee	✓		
Rep. Karl Ohs	✓		
Rep. Paul Sliter	✓		
Rep. Carley Tuss	✓		



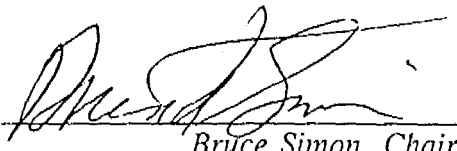
HOUSE STANDING COMMITTEE REPORT

March 6, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 201 (third reading copy -- blue) be concurred in as amended.

Signed:


Bruce Simon, Chair

Carried by: Rep. Hibbard

And, that such amendments read:

1. Title, lines 5 and 6.

Following: "~~IN~~"

Strike: remainder of line 5 through "OF" on line 6

Insert: "EMPLOYEE HAS BEEN INVOLVED IN"

2. Title, line 7.

Page 1, line 30.

Strike: "\$2,500"

Insert: "\$1,000"

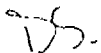
3. Page 1, lines 28 and 29.

Following: "in"

Strike: remainder of line 28 through "OF" on line 29

Insert: "employee has been involved in"

-END-


Committee Vote:
Yes 18, No 0.

521243SC.Hbk

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-3-95 BILL NO. SB201 NUMBER

MOTION: Amendment Ewer

NAME	AYE	NO
Rep. Bruce Simon, Chairman	✓	
Rep. Norm Mills, Vice Chair, Maj.		✓
Rep. Bob Pavlovich, Vice Chair, Min.	✓	
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella	✓	
Rep. Charles Devaney		✓
Rep. Jon Ellingson	✓	
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer	✓	
Rep. Rose Forbes		✓
Rep. Jack Herron		✓
Rep. Bob Keenan		✓
Rep. Don Larson	✓	
Rep. Rod Marshall		✓
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter		✓
Rep. Carley Tuss	✓	

failed

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 201

Call to Order: By CHAIRMAN JIM BURNETT, on April 4, 1995, at
8:20 AM

ROLL CALL

Members Present:

Sen. James H. "Jim" Burnett (R)
Sen. Thomas F. Keating (R)
Sen. Fred R. Van Valkenburg (D)
Rep. Norm Mills (R)
Rep. Bob Keenan (R)

Members Excused: None

Members Absent: Rep. Vicki Cocchiarella (D)

Staff Present: Eddy McClure, Legislative Council
Karolyn Simpson, Committee Secretary

Discussion: Amendments to SB 201

Discussion:

SENATOR BURNETT said he has no problems with the amendments from the House.

SENATOR VAN VALKENBURG asked SENATOR BURNETT if he had moved to Be Not Concurred In.

SENATOR BURNETT said no, it was SENATOR BARTLETT who made the Be Not Concurred In motion.

SENATOR VAN VALKENBURG said he thought it was SENATOR BAER who made the motion.

SENATOR BURNETT said he made the Be Concurred In motion, and SENATOR BARTLETT made a substitute motion to Be Not Concurred In.

REP. MILLS said REP. ELLIS carried this bill in the house, and he is present.

SENATOR KEATING asked SENATOR BURNETT if he recommended accepting the House amendments.

SENATOR BURNETT said yes, and we recede from the Senate amendments and accept the House amendments.

Motion: SENATOR KEATING moved to Recede from the Senate's objections to accept the House Amendments to SB 201.

Discussion:

SENATOR VAN VALKENBURG said he didn't think there was is a Senate Conference Committee that reflected the majority sentiment in the Senate, and that if SENATOR KEATING just wants to go back to the bill as it came from the House, the Senate as a whole, and the Senate Labor Committee, felt strongly there ought to be some triggering device before a test could be done on an employee. SENATOR BAER offered the language that was in the bill when it left the Senate that employee's acts or failure to act had to be the direct or proximate cause of the work-related accident. If the House amendments are accepted, the bill will go back to the Senate and they will reject the Conference Committee report, and the Committee's time will have been wasted.

SENATOR BURNETT asked SENATOR VAN VALKENBURG what would he change in the bill from what the House amendments did to it. They restored it to the original form, except the original \$500.00 was raised to \$2,500 by the Senate Labor Committee, then the House lowered it to \$1,000.

REP. MILLS said therein lies a compromise already.

SENATOR KEATING said the testing itself is the important thing, and if the testing isn't done quickly, then it doesn't have the validity.

REP. MILLS inserted, it's contaminated.

SENATOR KEATING said the worker needs protection in his record. If the test implies guilt, it should not be in his record. If the test is negative, or if he is found not to be in direct or proximate cause of the accident, then the record should be purged. He asked if purging is in the language of the bill.

REP. KEENAN said, in regard to the purging, there will be a record of the accident, and asked if it would be harmful to have a record of the employee being found not at fault in the employee's records. He then asked if it's the testing that will be purged, but if he's not guilty, he wouldn't worry about being vindicated.

SENATOR KEATING said he thinks that way too, but there are others in the Committee that felt that was a blemish.

REP. MILLS agreed, saying the very fact of a test was done can be misconstrued as a blemish.

SENATOR KEATING said by striking it from their personnel records, so there is no reference to it at all, they are clean. The way the bill is now, the test could be done immediately following the accident on those who were in proximity. If the test is negative, and the subsequent investigation reveals that person tested was not directly or proximately involved in the accident, their record would be purged, and the test would not be in their personnel records. He said he didn't know why that wouldn't be satisfactory in the Senate.

SENATOR VAN VALKENBURG said it wasn't when they voted on it.

SENATOR KEATING said he didn't know if it was well explained.

REP. KEENAN asked what the feeling was.

SENATOR VAN VALKENBURG said the feeling, best expressed by SENATOR BAER, was there ought to be a reason for the test being done, other than the fact that someone was just standing around at the time an accident occurred. He said it can best be dealt with by requiring the employer to put in writing the basis for believing the employee caused the accident, prior to taking the test. That does not delay taking the test and is not a huge burden on the employer, and will provide a basis for the test. Under current law, the employer is supposed to articulate the reasons the employer believes the employee is under the influence of drugs or alcohol, and apparently they don't want to do that. He suggested that they at least articulate why they think this employee caused the accident.

SENATOR BURNETT said REP. ELLIS carried the bill in the House, and asked him to make a comment.

REP. ELLIS talked about the example made in their Committee. There are people working in a dangerous environment and it is a privilege to do so, just as it is a privilege to drive an automobile. When a person is involved in an automobile accident, the thresholds are even lower than this. The individual is responsible to call authorities to the accident scene, and if they choose to do an alcohol test, the individual has no choice but to submit to one or yield the driver's license for 90 days. The purpose of this bill is to allow people to do these tests, to make the work place safer by making employees realize they are responsible for themselves to stay clean, as far as alcohol and drugs. If the responsibility is put back on the employer and he tests someone who test negative on a judgmental thing, then he becomes liable for infringing on that person's rights. That's the reason it's important for this bill to be there, not that there will be so much testing done, but the employees must understand they are responsible for going to work with their heads straight.

SENATOR BURNETT said that's an explanation that they didn't hear in the Senate Committee.

SENATOR VAN VALKENBURG said REP. ELLIS uses the example of someone driving a car, but under that example, the police or law enforcement are required to have probably cause to believe that someone is driving under the influence of alcohol, and they must articulate what that probably cause is. He said that's what he wants with this bill, why does the employer believe that this employee has caused the accident.

SENATOR BURNETT said he said he thought it did.

REP. MILLS referred to page 1, line 30, an employee has been involved in an accident. He said there is a probable cause articulated there. The employee has been involved, which does not mean that he was a bystander. A bystander is not involved in an accident.

SENATOR VAN VALKENBURG said a bystander could very easily be involved in an accident. If a person is walking on a sidewalk and someone drives their car up onto the sidewalk and hits the person, then the bystander is involved, but hasn't caused the accident.

REP. MILLS said he hasn't caused the accident.

SENATOR VAN VALKENBURG said he didn't say cause, he said involved.

REP. MILLS said the word involved is the problem.

SENATOR BURNETT asked what word other than "involved" could be used.

REP. MILLS suggested the word "participant." He said the individual could be in an accident through no fault of his own, and has no objection that he caused it. He referred to SENATOR VAN VALKENBURG's example, saying the person hit on the sidewalk should be tested, using SENATOR VAN VALKENBURG's reasoning.

SENATOR VAN VALKENBURG said there would be no reason to test the individual hit by the car. He said that is what he is trying to do for the employee who is just standing there when another employee drops an I beam on him.

REP. MILLS said maybe the terminology such as "causationally involved in an accident."

SENATOR VAN VALKENBURG said there is language in current law that says the employer has reason to believe (page 1, line 27) the employee's faculties are impaired. He said, if the new part (line 30) reads "an employer has reason to believe an employee has caused a work-related accident."

REP. MILLS said he sees another side to the issue. Sometimes a person involved in an accident could have avoided it, had his

faculties been in good shape. Maybe he doesn't have, so is involved in an accident even though he didn't cause it. He said he has some trepidation about SENATOR VAN VALKENBURG's wording, but it's in the right direction.

SENATOR BURNETT asked about wording to be changed.

SENATOR VAN VALKENBURG said the employer has reason to believe that the employee has caused a work-related accident..

REP. ELLIS asked about using "may have" instead of "has."

SENATOR VAN VALKENBURG said he has no strong feelings about that. He said "has reason to believe" puts some kind of test there so it's just not just an arbitrary test that is being required.

REP. MILLS said he thinks it should be in the employee's record until the test is finished and only purged when the test shows negative.

Ward Shanahan said he has no problems with that as long as the question of the test may not be delayed remains in the law. The only problem he has is, this employee is the only cause. The employee is a cause, because more than one employee can cause an accident. It may be necessary to test more than one employee. He agrees with putting in "an employer has reason to believe" because he doesn't want to allow someone to abuse employees by testing everybody within 2,000 yards of the accident scene. If the employee's been a cause, the duty to conduct the test is in the language from the house.

SENATOR BURNETT asked if "an employer has reason to believe an employee is involved" is satisfactory.

REP. MILLS read it as it would be, page 1, lines 29-30. An employer has reason to believe the employee has caused a work-related accident.

Don Allen suggested the wording "an employer has reason to believe an employee may have contributed to an accident."

SENATOR BURNETT asked if the word "contributed" rather than "involved" is suggested.

Ward Shanahan said whether the word contributed or caused is used makes no difference but doesn't want to get into a quibble over about the fact that a particular individual was the primary cause, because there can be several people at the accident scene.

SENATOR VAN VALKENBURG said he wants to make sure of the wording.

REP. MILLS read the lines in question. The employer has reason to believe the employee may have contributed to a work-related accident.

SENATOR VAN VALKENBURG suggested changing "the employee" to "an employee."

REP. MILLS agreed, then said the title needs to be fixed.

Eddye McClure said, for consistency, she is concerned that the House took out "direct or proximate cause" on line 30, page 1, but left it in on page 2.

Ward Shanahan said he wanted "direct or proximate cause" left in the written finding, because he thinks that person is entitled to that information.

REP. MILLS suggested changing it to read "more than one employee," because as it reads, it could be more than one.

SENATOR BURNETT said an employee could be involved singly, and employee would still work.

SENATOR VAN VALKENBURG said what has been talked about is acceptable. He said the Senate had discussed raising the dollar amount to \$5,000, but then agreed, in the Senate Labor Committee, to compromise at \$2,500. There are power tools that are worth more than \$500. He urged the house to go back to that level.

REP. MILLS said they started at \$500.00 in the house.

SENATOR BURNETT said the House had the figure down to \$500.00 then brought it back up.

REP. MILLS said the Senate compromised up and the House compromised down. He suggested \$1,500.00.

REP. KEENAN asked if the decision is up to the employer whether to test.

REP. MILLS said that was right.

SENATOR VAN VALKENBURG asked SENATOR BURNETT what he thinks of the figure of \$1,500.00.

SENATOR BURNETT said he wouldn't hold the bill up on that amount.

Motion/Vote: SENATOR VAN VALKENBURG moved to amend to \$1,500.00. The motion CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR VAN VALKENBURG moved to amend the House Business and Labor Committee amendment regarding the employee's involvement in a work-related accident to read "the employer has reason to believe an employee may have contributed to a work-related accident that causes death or personal injury." The motion CARRIED UNANIMOUSLY.

Motion/Vote: REP. MILLS moved the Conference Committee Report BE
ADOPTED. The motion CARRIED UNANIMOUSLY.

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 201

DATE 4/4/95

NAME	PRESENT	ABSENT	EXCUSED
Senator Burnett	X		
Senator Keating	X		
Senator Van Valkenberg	X		
Rep. Mills	X		
Rep. Keenan	X		
Rep. Cocchiarella		X	

Free Conference Committee
on SB 201
Report No.1', April 4, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 201, met and considered:
House floor amendments to third reading copy (blue)

We recommend that SB 201 (reference copy - salmon) be amended as follows:

1. Title, line 5.

Following: "WHEN"

Insert: "THE EMPLOYER HAS REASON TO BELIEVE THAT"

2. Title, line 6.

Following: "EMPLOYEE"

Strike: "HAS BEEN INVOLVED IN"

Insert: "MAY HAVE CONTRIBUTED TO"

3. Title, line 8.

Strike: "\$1,000"

Insert: "\$1,500"

4. Page 1, lines 29 and 30.

Following: "(ii)" on line 29

Insert: "the employer has reason to believe that"

Following: "EMPLOYEE" on line 30

Strike: "HAS BEEN INVOLVED IN"

Insert: "may have contributed to"

5. Page 2, line 1.

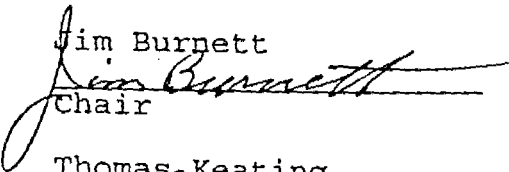
Strike: "\$1,000"

Insert: "\$1,500"

And that this Conference Committee report be adopted.

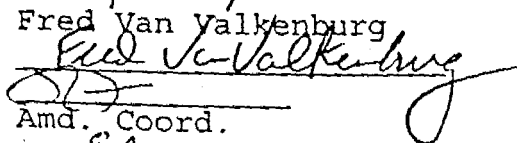
For the Senate:

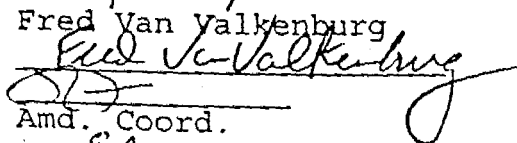
Jim Burnett


Chair

Thomas Keating

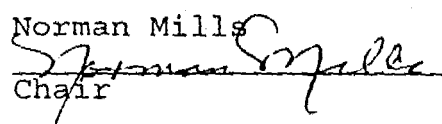
Fred Van Valkenburg


Amd. Coord.

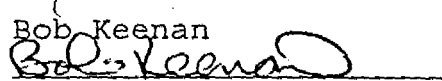

SA
Sec. of Senate

For the House:

Norman Mills


Chair

Bob Keenan


Vicki Cocchiarella

ADOPT

REJECT

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